

CITY OF BEVERLY, MASSACHUSETTS

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RULES OF THE PLANNING BOARD
FOR THE ISSUANCE OF SPECIAL PERMITS

The following rules are adopted in accordance with Massachusetts General Laws, Chapter 40A, Section 9.

1. Public meetings of the Board shall be held at the call of the Chairman. Public hearings are scheduled at the call of the Chairman. Applications shall be scheduled for hearing at the direction of the Chairman.
2. In the event of the absence, refusal, or incapacity of the Chairman, public meetings may be called and public hearings scheduled by the Vice-Chairman, and in his absence, refusal, or incapacity, by the written concurrence of three (3) members.
3. A four hundred dollar (\$400) filing fee (cash or check made payable to the City of Beverly) shall be filed together with a list of "parties in interest" as required by MGL Chapter 40A, Section 11, and five (5) official application forms for petition. Each application must be signed separately by the petitioner and, if different, by the record owner(s) of all of the land covered by the application – duplicated signatures will not suffice. The prescribed application form shall state:
 - a. the names and mailing addresses of the petitioner and of the land owner(s);

- b. Assessors' Map and lot numbers;
- c. the specific provisions of the zoning ordinance involved in the application;
- d. the use for which a special permit is sought;
- e. a description of the land to be affected;
- f. a declaration of the status or interest of the petitioner in the land;
- g. the date of acquisition of title and the name of the person from whom the land was acquired, if the petitioner is the owner of the land for which a special permit is being sought; if the petitioner is not the record owner of land, proof of the petitioner's right to file the application must be submitted (e.g. purchase and sale agreement, signed and notarized statement from the landowner[s]);
- h. a copy of the deeds into the current owner(s) and of the most current record plan showing the property that is the subject of the application;
- i. a disclosure as to whether the land to be affected by a special permit is contiguous to other land held in common ownership.

4. The five applications shall be accompanied by twelve (12) legible copies of a plan of the land affected. The plan shall be drawn to the scale of one inch equals forty feet (1" = 40'), unless the Planning Director shall, in writing, permit or direct the use of another scale; plan shall be dated (including the dates of all revisions, if any) and contain the following information:

- The name of the petitioner and of the owner(s);
- The name of the person who drew the plan and the signature and stamp of a registered land surveyor or registered professional engineer;

- All easements and existing lot improvements and setbacks from lot lines;
- A sufficiently large area surrounding the lot so that at least the property adjoining and opposite (when the latter is reasonably affected by the proposal) will be shown and such further detail as may reasonably be necessary to provide a description of the area in which the lot lies and the size and location of all buildings located on the lots in the area;
- In the case of special permits which involve buildings, a floor plan of the buildings drawn at the scale of one inch equals four feet (1" = 4') and elevation plans of all facades;
- the compass point showing the direction of north
- the graphic scale to which the plan is drawn
- the length of the boundary lines, distances, lot areas, any proposed new boundary lines in the case of a subdivision, as well as traffic circulation routes, walkways, and parking areas.

5. When in its opinion foreseeable issues of drainage, traffic, health, and safety may be involved in a special permit application, the Planning Board may require special reports or studies to be prepared in association with an application for a special permit. The scope or details of such reports or studies shall be determined by the Planning Director in consultation with appropriate municipal departments and shall be forwarded by the City to qualified consultants or engineers in an RFP (Request for Proposals). The Planning Department shall select a consultant based on an analysis of a) the price of the proposal, b) the consultants' qualifications,

and c) the ability of the consultant to perform the work within applicable time frames. The selection shall be ratified by the Planning Board. Such reports or studies shall be paid for by the petitioner in the form of a check payable to the consultant or engineer selected, which check shall be held by the Planning Department until the report or study has been accepted by the Planning Board.

6. An application which fails to meet the above requirements shall not be deemed complete and shall not be assigned for hearing by the Chairman.
7. In the event that the Chairman of the Board or Planning Director deems a filed application or plan incomplete or inadequate to provide a proper understanding of the matter, the applicant shall be advised of same and given an opportunity to submit additional information, revise the plan, or substitute a new one. An application may be dismissed for failure to comply with these rules within thirty (30) days after notice of such failure.
8. All applications shall be stamped by the City Clerk with the date received. An application not filed with the Office of the City Clerk is considered an invalid application and will not be considered by the Board.
9. Once an application has been accepted, it may be withdrawn without prejudice by the petitioner in accordance with the following procedures:

a) An application for which no notice of hearing has been published may be withdrawn without prejudice by submission of a letter to the Planning Board requesting such withdrawal. The letter requesting withdrawal shall be filed with the Planning Department and the City Clerk and attached to the subject application. A portion of the filing fee (\$100.00) will be returned to the petitioner. If the request for withdrawal is received after the Planning Department has delivered the public hearing notice to the newspaper for publication, no portion of the filing fee will be returned to the petitioner.

b) An application for which notice of a public hearing has been published may be withdrawn without prejudice only with the approval of the Planning Board. The petitioner shall present a letter to the Board requesting such withdrawal, and the Planning Board upon convening the public hearing shall vote to accept or deny such request, and shall notify the petitioner in writing of such action, which notice shall be filed with the City Clerk and attached to the subject application. No portion of the filing fee will be returned to the petitioner once notice of a public hearing has been published.

10. The Planning Board will publish a notice of the hearing on all applications assigned for hearing in a newspaper of general circulation in the City of Beverly and will send notices to the petitioner and to those owners of the surrounding property who, in the opinion of the Board, are deemed to be particularly affected or as required under M.G.L. Chapter 40A, Section 11. There shall be an interval

of at least fourteen (14) days between the date of the first publication of the hearing and the date of the hearing. Hearings for special permits shall be held by the Board within sixty-five (65) days of the date the application is filed and date-stamped by the City Clerk. The cost of the required legal notice shall be borne by the applicant.

11. At the hearing, the petitioner shall produce such additional deeds, plot plans, and other records reasonably bearing upon the lot or lots for which a determination is desired or which the Board may request. The Board may retain any record or plot plan which has been introduced as evidence, for reference in considering the application.

12. The decision of the Board shall be made within ninety (90) days from the date of the public hearing on the special permit application, or such further time as may be agreed upon at the written request of the applicant. The Board shall keep a detailed record of its proceedings, showing the vote of each member upon each question (or if a member is absent or fails to vote, the record shall indicate such fact), and the record and the decision shall set forth clearly the reason or reasons for granting or denying the special permit decision, and for its other official action. Copies of this record shall be filed with the Office of the City Clerk and shall be a matter of public record.

Immediately after filing the decision with the City Clerk, the Clerk of the Board shall send notices to those people notified of the hearing under Rule 10 herein. The notice, signed by the Chairman, Vice-Chairman, or by all of the members participating in the decision, shall state that a decision on the special permit application has been filed with the City Clerk; whether the Board approved or denied the application; the date on which the decision was filed with the City Clerk; and a statement informing "aggrieved persons" of their right to appeal the Board's decision within twenty (20) days of its filing with the City Clerk.

13. Special permit petitions which have been granted shall lapse two (2) years from the date the recorded decision was filed with the City Clerk, unless substantial and lawful use or construction has commenced on or before that date.
14. A special permit shall not be exercised until the twenty (20) day appeal period has ended with no appeals having been filed, or until any appeal that was filed has been disposed of. Also, a special permit shall not take effect until the petitioner has recorded in the Essex South District Registry of Deeds a notice certified by the Chairman or the Clerk of the Planning Board, containing the name and address of the land owner, which identifies the land affected, and states that a special permit has been granted and lists any conditions that might have been placed on the special permit.
15. Special permits shall require a two-thirds vote of the Board.

16. The Board may, by majority, vote to waive any provision of these rules for good cause shown, provided that such waiver shall not be inconsistent with any provision of the Zoning Ordinances or the General Laws of Massachusetts.

17. Modifications to special permits issued by the Planning Board may be granted in the following manner:

a) *Minor changes:* Changes in plans or conditions attached to a special permit which are deemed by the Planning Board to be minor in nature and which are in compliance with the provisions of the Zoning Ordinance may be allowed following presentation to the Planning Department of drawings denoting such changes accompanied by a narrative description, including the reasons such changes are necessary. The Planning Department may consult with other City boards and departments and will make a recommendation to the Planning Board. The Planning Board will announce its decision regarding such requested changes, and its reasons therefor, at a regularly scheduled public meeting. The Planning Board may vote to approve such changes only if it finds that the scope and nature of the original permit has not been expanded.

b) *Major changes:* Changes in plans or conditions attached to a special permit which are deemed by the Planning Board to be major in nature shall be the subject of a petition to modify the special permit and shall follow the same

procedures for notice, public hearing, and decision as for the original permit.

The petition for a major modification shall be accompanied by a new application, revised plan(s), and filing fee.

18. Applications for special permits must be submitted in a form approved by the Planning Director and shall be completed and signed as required above.
19. The Board shall consider the following factors and criteria in deciding whether to grant the special permit:
 - That the specific site is an appropriate location for the proposed use, and that the character of adjoining uses will not be adversely affected;
 - That no factual evidence is found that property values in the district will be adversely affected by such use;
 - That no undue traffic and no nuisance or unreasonable hazard will result;
 - That adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use;
 - That there are no valid objections from abutting property owners based on demonstrable fact;
 - That adequate and appropriate City services are or will be available for the proposed use.
20. These rules and procedures are intended at all times to be consistent with and subject to the provisions of Massachusetts General Laws Chapter 40A, as said

Chapter may be amended from time to time. In the event of any such inconsistency, or any future change making these rules and procedures inconsistent, the provisions of said Chapter 40A, and of any amendments thereto, shall control.

ADOPTED: August 17, 1982

REVISED: November 29, 1988
May 15, 2001
March 16, 2004